

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

AT&T CORP.,

Plaintiff

vs.

GENERAL INSULATION COMPANY,

Defendant

04 11815 GAO

COMPLAINT

RECEIPT # 58093
AMOUNT \$ 0
SUMMONS ISSUED 18
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK FPM
DATE 8/19/04

***** MAGISTRATE JUDGE Bowles

The Plaintiff, AT&T Corp., by its attorneys Cohn & Dussi, LLC, as and for its Complaint herein alleges as follows:

THE PARTIES

1. The Plaintiff, AT&T Corp. (hereinafter "AT&T"), is a corporation duly organized by law having a usual place of business at 55 Corporate Drive, Bridgewater, New Jersey.
2. The Defendant, General Insulation Company (hereinafter the "Defendant"), is a corporation duly organized by law having a usual place of business at 24 East Cross Street, Somerville, Massachusetts.

JURISDICTION

3. This Court has jurisdiction over this claim based on the following:
 - a. Under 28 U.S.C. Section 1331, as Defendant's liability arises under a tariff filed with the Federal Communications Commission (the "F.C.C."); and
 - b. This Court has jurisdiction over this claim under 28 U.S.C. Section 1332, based upon Diversity Jurisdiction.

COUNT I
(Breach of Master Agreement No. 111822)

4. The Plaintiff, AT&T, reavers, realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 3 above with the same full force and effect as if expressly set forth herein.
5. At all times relevant to this action, AT&T provided telephone and voice/data service pursuant to Tariffs.
6. On or about February 13, 2002, the Defendant executed and delivered to AT&T a Master Agreement, AT&T Contract Tariff Service Order Attachment, AT&T Service Order Attachment-Voice/Data Services (hereinafter the "Agreement") pursuant to which the Defendant agreed to pay to AT&T all amounts due together with interest, costs and attorneys' fees in connection with the Defendant's purchase of services from AT&T. A true and accurate copy of said Agreement is attached hereto as Exhibit "A" and by this reference specifically incorporated herein.
7. Pursuant to said Agreement, AT&T rendered services to the Defendant in the sum of One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars.
8. The Defendant has breached its contract with AT&T as a result of its failure to make payment to AT&T on all amounts due under said Agreement and owes AT&T the sum of One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars plus interest from September 3, 2003 on or before which date demand for payment was duly made, costs and attorneys' fees.

COUNT II
(Breach of Master Agreement No. 112068)

9. The Plaintiff, AT&T, reavers, realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 8 above with the same full force and effect as if expressly set forth herein.
10. At all times relevant to this action, AT&T provided telephone and voice/data service pursuant to Tariffs.
11. On or about January 25, 2002, the Defendant executed and delivered to AT&T a Master Agreement, AT&T Contract Tariff Service Order Attachment, AT&T Service Order Attachment-Voice/Data Services (hereinafter the "Agreement") pursuant to which the Defendant agreed to pay to AT&T all amounts due together with interest, costs and attorneys' fees in connection with the Defendant's purchase of services from AT&T. A true and accurate copy of said Agreement is attached hereto as Exhibit "B" and by this reference specifically incorporated herein.
12. Pursuant to said Agreement, AT&T rendered services to the Defendant in the sum of One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars.
13. The Defendant has breached its contract with AT&T as a result of its failure to make payment to AT&T on all amounts due under said Agreement and owes AT&T the sum of One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars plus interest from September 3, 2003 on or before which date demand for payment was duly made, costs and attorneys' fees.

COUNT III
(Services Rendered)

14. The Plaintiff, AT&T, reavers, realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 13 above with the same full force and effect as if expressly set forth herein.
15. The Defendant owes AT&T One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars for services rendered by CTC to the Defendant, together with interest thereon from September 3, 2003 on or before which date demand for payment was duly made, costs and attorneys' fees.

COUNT IV
(Unjust Enrichment)


16. The Plaintiff, AT&T, reavers, realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 15 above with the same full force and effect as if expressly set forth herein.
17. AT&T provided services to the Defendant for an agreed upon price and the Defendant has failed, refused neglected and continues to refuse to make payment to AT&T in consideration for the services provided by AT&T to the Defendant.
18. As a result of the foregoing, the Defendant has been unjustly enriched in the sum of One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars, which sum AT&T is entitled to recover.
19. As a result of this unjust enrichment, the Defendant owes AT&T One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars for services rendered by AT&T to the Defendant, together with interest thereon from September 3, 2003, costs and attorneys' fees.

WHEREFORE, AT&T prays that Judgment enter as follows:

1. Awarding AT&T One Hundred Twenty Five Thousand Seven Hundred Forty Five and 79/100 (\$125,745.79) Dollars in Tariffed charges for the services provided, plus interest, against the Defendant;
2. Awarding AT&T its costs and disbursements, including reasonable attorneys' fees for prosecuting this action; and
3. Granting AT&T such other and further relief as this Court may deem just and proper in the circumstances.

Respectfully submitted,
AT&T Corp.,
By its attorneys,
Cohn & Dussi, LLC,

Date: 8/11/04


John J. Dussi, BBO# 546355
25 Burlington Mall Road, 6th Floor
Burlington, MA 01803
(781) 494-0200

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) AT&T Corp v. General Insulation Company
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2234?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME John J. Dussi
- ADDRESS 25 Burlington Mall Rd, Burlington, MA 01803
- TELEPHONE NO. 781-494-0200

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

AT&T Corp.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John J. Dussi
Cohn & Dussi, LLC
25 Burlington Mall Rd.
Burlington, MA 01803

DEFENDANTS

General Insulation Company
Middlesex County

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

Attorneys (If Known)

Kevin J. Snyder & Associates, LLC
701 North Green Valley Parkway
Suite 200
Henderson, NV 89074

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ DEF
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff seeks to recover monies owed for services rendered.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 125,745.79 CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE